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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 STATE OF CALIFORNIA, *et al.*,
14 Plaintiffs,
15 v.
16 JOSEPH R. BIDEN, JR., *et al.*,
17 Defendants.¹

18
19 SIERRA CLUB, *et al.*,
20 Plaintiffs,
21 v.
22 JOSEPH R. BIDEN, JR., *et al.*,
23 Defendants.

No. 4:19-cv-00872-HSG
No. 4:19-cv-00892-HSG
No. 4:20-cv-01494-HSG
No. 4:20-cv-01563-HSG

JOINT STATUS REPORT

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26 ¹ President Biden is automatically substituted as a Defendant pursuant to Rule 25(d) of
27 the Federal Rules of Civil Procedure. Other official-capacity parties have also been substituted
28 for their predecessors, and several further substitutions are likely to occur in the near future as
current acting officials are succeeded by appointees.

1 In accordance with the Court’s Order of January 21, 2021, Plaintiffs and Defendants
 2 submit the following joint status report addressing the impact on the above-captioned cases of
 3 President Biden’s recent Proclamation pausing border wall construction.

4 On January 20, 2021, President Biden issued a Proclamation declaring that “[i]t shall be
 5 the policy of [his] Administration that no more American taxpayer dollars be diverted to construct
 6 a border wall.” *See* Proclamation No. 10142, 86 Fed. Reg. 7225, 7225 (Jan. 27, 2021). The
 7 Proclamation states that the declaration of a national emergency at the southern border in
 8 Proclamation 9844 of February 15, 2019 (84 Fed. Reg. 4949), and continued on February 13,
 9 2020 (85 Fed. Reg. 8715), and January 15, 2021 (86 Fed. Reg. 6557), “is terminated and that the
 10 authorities invoked in that proclamation will no longer be used to construct a wall at the southern
 11 border.” Proclamation No. 10142.

12 In furtherance of that policy, the President directed the Secretary of Defense and the
 13 Secretary of Homeland Security to “pause work on each construction project on the southern
 14 border wall, to the extent permitted by law, as soon as possible but in no case later than seven
 15 days from the date of [the] proclamation.” *Id.* § 1(a)(i). The President also directed the
 16 Secretaries to “pause immediately the obligation of funds related to construction of the southern
 17 border wall, to the extent permitted by law.” *Id.* § 1(a)(ii). The Secretaries may make an
 18 exception to the pause in construction “for urgent measures needed to avert immediate physical
 19 dangers or where an exception is required to ensure that funds appropriated by the Congress fulfill
 20 their intended purpose.” *Id.* § 1(b).

21 In accordance with the Proclamation, the Deputy Secretary of Defense issued a
 22 memorandum on January 23, 2021, directing appropriate Department of Defense components to
 23 pause work on all border wall projects undertaken pursuant 10 U.S.C. § 284 and 10 U.S.C. § 2808,
 24 “to the extent permitted by law, as soon as possible, but in no case later than 1700 EST,
 25 Wednesday January 27, 2021.” *See* Memorandum for the Chairman of the Joint Chiefs of Staff
 26 *et al.*, Re: Proclamation of January 20, 2021 (attached as Exhibit 1). Consistent with the
 27 Presidential Proclamation, the Deputy Secretary’s memorandum authorizes an exception to the
 28 pause “for urgent measures needed to avert immediate physical dangers.” *Id.* The Deputy

1 Secretary also ordered the United States Army Corps of Engineers to “cease exercising the
2 authority provided by [sections 284 and 2808] to award contracts or options on existing contracts,
3 incur new obligations that advance project performance, or incur new expenses unrelated to
4 existing contractual obligations.” *Id.*

5 During the pause in construction and obligations of funds, the President directed an
6 “assessment of the legality of the funding and contracting methods used to construct the wall”
7 and of “the administrative and contractual consequences of ceasing each wall construction
8 project.” *Id.* § 1(a)(i). The President also ordered agencies to “compile detailed information on
9 all southern border wall construction projects, the completion status of each wall construction
10 project, and the funds used for wall construction since February 15, 2019.” *Id.* § 1(a)(iii).

11 Finally, the President directed the Secretary of Defense and the Secretary of Homeland
12 Security, in consultation with the Attorney General and other officials, to develop a plan within
13 60 days “for the redirection of funds concerning the southern border wall, as appropriate and
14 consistent with applicable law.” *Id.* § 2. The plan must “include consideration of terminating or
15 repurposing contracts with private contractors engaged in wall construction, while providing for
16 the expenditure of any funds that the Congress expressly appropriated for wall construction,
17 consistent with their appropriated purpose.” *Id.* “After the plan is developed, the Secretary of
18 Defense and the Secretary of Homeland Security shall take all appropriate steps to resume,
19 modify, or terminate projects and to otherwise implement the plan.” *Id.*

20 In light of the ongoing review process called for by the Proclamation, the parties request
21 that the Court stay further action in these cases until the review is complete. The President has
22 directed the Executive Branch to undertake an assessment of “the legality of the funding and
23 contracting methods used to construct the wall,” and also to develop a plan within 60 days for
24 “the redirection of funds concerning the southern border wall, as appropriate and consistent with
25 applicable law.” Proclamation No. 10142 § 2. It would therefore be appropriate for the Court to
26 hold further proceedings in these cases in abeyance to allow for the completion of the process that
27 the President has directed.

28 The Supreme Court adopted this approach in the ongoing appeals in the 2019 cases

addressing the § 284 construction projects. On February 3, 2021, the Supreme Court granted Defendants' motion to hold the § 284 cases in abeyance in light of the Proclamation and removed the cases from the February argument calendar. *See Biden v. Sierra Club*, No. 20-138 (Order List), at www.supremecourt.gov/orders/courtorders/020321zr_6jfl.pdf.²

The parties propose to file a joint status report on April 15, 2021, updating the Court on any material developments in these cases.

DATE: February 16, 2021

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² In the § 2808 cases before the Supreme Court, Defendants filed a petition for a writ of *certiorari* on November 17, 2020, and Plaintiffs' response is currently due May 19, 2021. *See Biden v. Sierra Club*, No. 20-685.

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